THE HON'BLE SRI JUSTICE B.SESHASAYANA REDDY

Writ Petition No.3991 of 1996

(Dated: 27-06-2012)

Between:

Visweswaraya Narasimha Rao and others

…Petitioners

A n d

The Mandal Revenue Officer, Veeraghattam Mandal, Srikakulam District and others

…Respondents

THE HON'BLE SRI JUSTICE B.SESHASAYANA REDDY

Writ Petition No.3991 of 1996

ORDER:

This writ petition has been filed by Visweswaraya Narasimha Rao and Viswesaraya Lakshminarayana seeking writ of certiorari calling for the records relating to S.R.15(1) 1/87 SKL, dated 30-5-89 of the 2nd respondent-Settlement Officer, Visakhapatnam as confirmed in TAS No.5 of 1989 dated 28-8-95 of the 3rd respondent-The District Judge and Estate Abolition Tribunal, Srikakulam, and quash the same.

2. Late Badangi Srungarao was the Mokhasdar of the Vanduva village. He sold Ac.1200-00 acres to the Rajah of Kurupam and retained an extent of Ac.200-00 acres under his personal cultivation through document No.63, dt.3-12-1710. The land bearing O.S.No.139 was under a tank called Rayudugari Tank by the year 1910. The Mokhasdar owned half of the extent, i.e., Ac.15-49 of the tank. Vanduva village was declared as an Inam Estate under Section 9 of the Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948 (hereinafter referred to as "the Act, 1948") and was taken over by the Government on 22-12-1968. The petitioners filed an application before the Settlement Officer, Visakhapatnam for grant of ryotwari patta in respect of Ac.12-50 cents comprising O.S.No.139. The petitioners pleaded in the petition before the Settlement Officer that the Mokhasadar and his wife Santhamma

Dormachi cultivated the land and raised paddy crops. During the year 1946, Smt. Santhamma Doramsai, who is the maternal aunt of the petitioners executed a registered will in favour of the father of the petitioners bequeathing her entire property as she had no issues and her husband pre-deceased her. Their father cultivated the land during his lifetime till his death in the year 1963. Thereafter, the petitioners have been cultivating the land as his legal heirs. The Settlement Officer, after holding detailed enquiry granted ryotwari patta in respect of schedule "A" lands while deferring grant of ryotwari patta in respect of "B" schedule lands pending examination of Ayacutdars under the Tank. Before the Settlement Officer, claimants examined three witnesses and marked 17 documents. The Settlement Officer, by order dated 12.02.1987 allowed the claim in part while disallowing the claim in respect of lands bearing O.S.Nos.54 and 193. The relevant portion of the order of the Settlement Officer needs to be noted and it is thus:-

> " The second tank claimed is "Jaggalakarra Tank" in O.S.No.160. Besides the supporting and the later day evidence already discussed above the other prices of documentary evidence which throws light on that it is a wet lands are Ex.P-2 of 1910. It mentions "Jaggalakarra lopu banjaru". Since Rayulungari Cheruvu is mentioned as a tank the fact Jaggalakarra Banjari and other 'parisinaidu cheruvu lopu Banjaru' is an indication that they are not tanks by that time, but they are fallow lands if they are cultivable lands certain amount would have been mentioned against the column. Through Ex.P-2 of 1946 this tank was also transferred. The recitals do not make any mention of a tank. It follows the tank ceased to be tank. The Section-7 notice has been issued to the Mokhasadar for this tank in 1941. Therefore, it follows that the tank was cultivated by that time. *…(sic)* contend that this tank was also reclaimed long prior to 1934. Therefore, in the absence of any evidence contrary to this point it has to be held that this tank was cultivated long prior to 1934. Therefore, the provisions of Section 20(A) of

the Estates Land Act are not applicable in these cases in view of this decisions already cited. So, as far as O.S.160 (Jaggalakarra Tank) is concerned the claim is allowed. But as far as O.S.139 (Rayadugari Tank is concerned) it is better if the ayacutdars under this tank are enquired into by the Sett.By Tahasildar. This will be held over untie then.

11. The claimants contend that they have also cultivated as private lands B.S.No.201 and 202 A.D and Konda Poramboke respectively. They correspond to Estate Survey No.16 and 21.Ex.P-2 recitals show 'konda vara banjaru' in E.S.14, 16 and 21 extents Ac.9-24 cts, Ac.10-52 cts, and Ac.24-31 cets in the "B" marked lands. Ex.P-1 (1946) register will refer to all these O.S.Nos. The recitals show `Pallam, Mettu, Banjaru, Adavi Konda vagairalatho cheri naaswadhina hakku anubhavopathamai vunndi". It shows the banjar meaning O.S.201. Adavi Konda meaning O.S.202 were in the personal enjoyment of Santhamma Doramasi or her husband by 1910 and 1946. In Ex.P-15 of 1939 (Registered document) the western boundary of O.S.198 is referred as "-------". As seen from Ex.P-17 the banjar dry land is O.S.197, 201 and 202. It also proves it is in the possession of Mokhasadars and it is cultivated as dry land by 1939. In the fair Adangal of 1922 the banjar in O.S.201 is shown to be cultivated by the claimants. Ex.P-27 notices referred to O.S.202 Poramboke konda extent Ac.4-52 cts another notice refers to the same O.S.No. but to an extent of Ac.4-61 cts another notice refers to the same survey number and the extent Ac.1-32 cts. These notices were issued between 1939 and 1942. These show the enjoyment of the lands by the claimants predecessors. Immediately after taking over of the Estate the S.L.R has been prepared which shows the enjoyment of some of these lands by the claimants. The Adangal of 1378 also support this. This is further supported by the depositions of P.W.1 to P.W.3. It is stated that the cist receipts in Ex.P-12 to 14 also relate to these lands. In the absence of any other evidence contra a presumption has to be drawn in favour of the claimants. Though a large extent is indicated in Ex.P-1 and Ex.P-2, the present claim as per their statement and S.L.R is only H.A.10-05-5 in these two O.S.Nos. The claim is allowed only to this extent. No convincing evidence has been let in respect of O.S.No.54 and 193 lands. Hence this claim is disallowed."

3. The Settlement Officer conducted further enquiry and proceeded to hold that the land in dispute is a tank bed and therefore, it comes within the purview of Section 3(16)(a) of the Andhra Pradesh (Andhra Area) Estates Lands Act, 1908 and thus the claimants were not entitled to ryotwari patta, by order dated 30.5.1989. I deem it appropriate to refer the relevant portion of the order dated 30-5-1989 passed by the Settlement Officer, which reads as hereunder:-

> " In this case, during the year 1940, the conversion of tank poramboke into cultivable land was found objectionable and notice under Sec.7 of the Estates Land Act, 1903 was served and retained its character of Tank Poramboke. The learned counsel for the claimants argued that the land was converted into ryotwari long prior to the issue of amended Act of 1934. This contention cannot be accepted since it is not the particular use to which the land is put but its original character that determines the right of the claimants to a ryotwari patta. In this connection reference may be made to the following passage occurring at page 317 of the aforesaid decisions.
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> "Whether it was in actual use as a tank or not as on the date of abolition, it would continue to be treated as tank bed if as on the date of the Abolition Act it was a land coming within the description of Sec.3(16) of the Estate Land Act. Further, it was observed that
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> "The plain meaning of the words can only be that any land which stands set apart for any communal purpose cannot be converted excepting by adopting the procedure under Sec. 20(a). They refer only to the character and nature of the lands and not to the actual use to which they were put on the date of the specification under Sec.29(a). In any case, if a land was tank bed or any other communal land by 1934, it was land set apart for the purpose for which it was intended as on that date and it could not be converted to any other use or purpose excepting by an order under Sec.20(a)(a)(b)".
>
> There is no recorded evidence to show that the tank bed was converted into ryoti before the issue of Amended Act of 1934.

In view of the categorical pronouncement of the full bench, there is no scope for the contention that the principles laid down, therein applies only to tank bed lands, which were for the first time brought under cultivation after 1934.

Sec.13(b)(iii) of the Madras Act XXVI, 1948 provides that in the Inam Estates, the landholder shall be entitled to a ryotwari patta in respect of all lands not being (1) Lanka Lands, (2) Communal lands specified in Sec.3(16) (a) to (c) of the Madras Estates Land Act and (3) Forest lands, which have been abandoned or relinquished by a ryot or which have never been in the occupation of a ryot provided that the landholder has cultivated such lands himself by his own servants or hired labour etc. from 1-7-1945 and has been direct and continuous possession of such lands from that date. Sec.3(16) of Madras Estate Land Act lays down that ryoti land means cultivable land in an estate other than private land but does not include beds, and bunds or tanks and of supply of drainage surplus, or irrigation channels.

Hence, the land in dispute is a tank bed or otherwise it falls within the purview of Sec.3(16) of the Madras Estate Land Act and the claimant would not be entitled to a ryotwari patta in respect of the schedule land.

Their claims are accordingly disallowed under Sec.15(1) of the I.A.Act, 1948".

4. Assailing the order dated 30-5-1989 of the Settlement Officer, the petitioner filed T.A.S.No.5 of 1989 under Section 15(1) of the Estates Abolition Act before the District Judge & Estates Abolition Tribunal, Srikakulam. The petitioners contended before the Appellate Tribunal that the land for which ryotwari patta has been sought for does not form part of the Rayudugari Tank and that the land is a ryoti land under direct and continuous personal cultivation by their forefathers and the same has been evidenced by cist receipts that are marked as Exs.P-11, P-12, P-13 and P-14. They also pleaded before the Appellate Tribunal that the Settlement Officer earlier recorded a finding in his order dated 12-12-1987 that Rayudugari cheruvu had been reclaimed

and cultivated long prior to 1934. Therefore, it is impermissible in the enquiry taken up by the successor-in-office of Settlement Officer to take a different view that the land was not brought under cultivation prior to 1934. The Appellate Tribunal, on hearing the counsel appearing for the parties and on considering the material brought on record, came to the conclusion that the petitioners failed to place on record any material to establish that the classification of lands has been changed to ryoti land under Section 20A of A.P (Andhra Area) Estate Abolition Act, 1908 and thereby, proceeded to dismiss the appeal by judgment dated 28-8-1995. It is trite to refer para (12) of the judgment passed by the Appellate Tribunal and it is thus:-

> " The first petitioner put up an application to the Executive Engineer, Irrigation Department to certify about Rayudu Tank of vanduva village. The Executive Engineer addressed a letter to the Collector dated 29.04.1987 stating that R.S.No.139-P of Vanduva village was classified as Rayudu Tank, which is having an ayacut of 55 acres. From the evidence on record it is clear that the schedule lands as mentioned in the petition are always treated as part of tank. Though the portion of the tank-bed were encroached and brought under cultivation because it was not submerged under water, but the fact remains that the lands always remain their character of tank-bed. The lower Court, though not referred to all the documents filed on behalf of the petitioners and considered their effect, but still basing on the evidence in record, the lower court has come to the conclusion that the disputed land always retained its character as tank poramboke. That finding is not shown to be false or improper. Even though the lower court has not appreciated the evidence on record properly, but it came to the right conclusion in deciding the dispute in question. In view of the above discussion I have no hesitation in holding that the petitioners failed to prove that the lands in question as shown in the schedule are their cultivable lands or ryoti lands or that the classification of the lands had been changed to ryoti lands under Section 20(a) of A.P (Andhra Area) Estate Land Act, 1908 by an order in writing issued in favour of them by the

> Collector. In the absence of any of these things, it cannot be said that the lands which are shown as Tank-bed poramboke for which the petitioners are encroachers cannot claim the right or title or patta in respect of those lands. The lower Court has correctly decided the points involved and there are absolutely no grounds for me to interfere with the findings given by the lower Court. The points are answered accordingly against the appellants."

Hence this writ petition.

5. Heard *Sri V.Narasimham*, learned counsel appearing for the petitioners and the learned Government Pleader for Revenue appearing for the respondents 1 and 2.

6. It is contended by the learned counsel appearing for the petitioners that the Settlement Officer, by his order dated 12-12-1987 recorded a finding that the tank bed of Rayudugari Cheruvu was brought into cultivation prior to 1934 and therefore, it is impermissible for the successor-in-office of the Settlement Officer to draw a different conclusion basing on the self-same evidence. In elaborating his argument, he would contend that the Settlement Officer, in his order dated 12-02-1987 deferred the issue with regard to grant of ryotwari patta in respect of land bearing O.S.No.139 to ascertain the objection of ayacutdars, if any, and that during the further enquiry by the subsequent Settlement Officer, the ayacutdars reported no objection for grant of patta in favour of the petitioners, in which case, the successor-in-office of the Settlement Officer ought to have allowed the claim of the claimants and issued ryotwari patta in respect of the lands bearing Sy.No.139.

7. Learned Government Pleader for Revenue appearing for the respondents submits that the petitioners failed to place any material on record to show that the tank bed land coming within the purview of

the Rayudugari tank has been converted into cultivable land prior to 1934 and in the absence of such material, the Settlement Officer is justified in rejecting the claim of the petitioners and therefore, the order impugned in the writ petition does not suffer from any illegality or irregularity warranting interference by this Court, in exercise of powers under Article 226 of the Constitution of India.

8. The issue that calls for adjudication is:

> Whether the petitioners are entitled to ryotwari patta for the land bearing O.S.No.139 which comes under the purview of Rayudugari Tank ?

9. It is not in dispute that the land for which ryotwari patta has been sought is a tank bed land (Rayudugari cheruvu). It has been held by a Full Bench of this Court in **Pamidimarri Chenchulakshamma v. The Estates Abolition Tribunal, Nellore (District Court)**[1] that a plain reading of sub-clause (iii) of Section 13 of the Act, 1948 makes the exclusion of the three classes of lands specified in Section 3(16)(a)(b) & (c) of the Estate Land Act, 1908 from its purview.

11. Let me examine the evidence placed on record by the appellants to substantiate their plea that the lands in question were brought under cultivation prior to 1934. In case the land is to be converted from tank bed land in to agricultural land, permission from the Collector as provided under Section 20 A of the Act is required. Indisputably, no such permission has been obtained by the claimants or his predecessors moved an application before the Collector seeking permission under Section 20A of the Act. The claimants placed on record certain registered sale deeds, cist receipts apart from adducing oral evidence of PWs.1 to 3. The appellate authority, examined the evidence of PWs.1 to 3 and the documents placed on record very

minutely. Neither the survey number nor the local name of the lands are mentioned in the documents placed on record except mentioning patta Nos.1 and 2. The appellate authority pointed out this lacuna and came to the conclusion that the documents placed on record do not help the petitioner to advance their contention that the lands were brought under cultivation prior to 1934. I may refer the relevant portion of the order passed by the appellate authority to know how minutely the appellate authority examined the documents placed on record and it is thus:-

> " The lands in survey numbers mentioned in Ex.P.1 are not tallying with the lands in survey numbers as mentioned in the petition schedule except the survey No.186/B. Except these two documents, the petitioner has not filed any other document to show that he has got right title and interest in respect of the petition schedule lands. In the absence of anything, it cannot be said that the schedule mentioned lands in the petition are originally belonging to Badani Srunga Rao. Ex.P.3 is the sale deed in respect of S.No.188. That survey number is not the one of the survey numbers mentioned in the petition schedule. So also Ex.P.4 relates to survey No.138. This is also not the one of the lands claimed by the petitioners in the petition schedule. Ex.P.5 is an affidavit filed by Badangi Santhamma alias Doramachi. That is not at all relevant for the purpose of this case. Ex.P.6 is the judgment copy in O.S.146/2002 on the file of the District Munsif's Court, Rajam. As seen from the judgment the dispute relates to Survey No.112 and Survey Nos.209/2 and 107. The said suit was filed by one Gannavarapu Sreeramulu against Badangi Mahalakshmamma alias Santhamma Doramachi and it was dismissed. The lands in survey numbers referred in Ex.P.6 are not the lands in dispute because they are not tallying with the survey numbers in the petition schedule. So, the finding given by the learned District Munsif under Ex.P.6 is not relevant because, the survey numbers mentioned therein are not the subject matter of dispute in the instant case. Ex.P-7 is the notices issued under Section 7 of the Madras Land Encroachment Act to Badangi Mahalakshmamma alias Santhamma in the year 1939 stating that she encroached the land in Survey Nos.202, 139, 54 and 160. The survey numbers mentioned in Ex.P.7 do not tally with the present survey numbers as shown in the petition schedule. Ex.P.8 is the deposition of the Village Karanam of Vandava. According to him the lands in survey numbers 132, 110 and 138 are the Inam wet lands of Mukkavilli people. But those survey numbers are not referred to in the petition schedule. So, Ex.P.8 is not helpful to the case of the petitioners. Ex.P.9 is the lease deed executed in respect of Survey

No.166. Survey No.166 is not shown as one of the items in the petition schedule lands. Ex.P.10 is the cist receipt. It does not contain the survey number, for which land, Bandangi Mahalakshmamma alias Santhamma paid the tax to the Government . Exs.P.11, P.12, P.13 and P.14 are also the tax receipts which are standing in the name of either father of P.W.1 or of Badangi Lakshmma. These tax receipts do not prove the title of the parties. There is no dispute about the fact. They can at best be taken into consideration to prove possession of the parties. The survey numbers or the local names of the lands are not mentioned in all these documents except mentioning the patta numbers as No.1 and No.8. A patta may consist of several survey numbers. So it is for the petitioners to establish that the lands now claimed by the petitioners come within the particular patta numbers, but that has not been proved. PW.1 did not state in his deposition that the petition schedule lands are in so and so patta number. P.W.2 is the village karanam since 1940. According to him, a fair Adangal was written in 1922 and Badangi Narasimha Rayadu's name was shown as pattadar against block No.6 and D.S.No.6. He also did not say the patta number of the land is No.1 or that the petition schedule lands come under the said patta number. He stated that Ex.P.10 receipt shows about payment of water rate for all the lands including the lands to grant patta in O.S.160 or O.S.139. Ex.P.15 relates to survey No.198. But the petitioners are not claiming any land in survey No.198. In Ex.P-16 there was no mention about the survey number. Ex.P-17 is the No.4 map. So, none of the documents filed by the petitioners would establish that Badangi Srungarao is the original owner of the petition schedule lands. So also there is no material to show that after death of Badangi Srungarao, Badangi Lakshmma alias Santhamma Doranachi executed the will in favour of the father of Pw.1 settling the present petition schedule properties. Though the said Santhamma Doramachi might have settled some properties in favour of the father of P.W.1 but the present petition schedule properties are not covered by Ex.P.1".

The petitioners claim for grant of ryotwari patta in respect of O.S.No.139 admeasuring Ac.10-00. Indisputably, the land for which ryotwari patta has been sought for is a tank bed land of Rayudugari cheruvu.

12. As was held by a Full Bench of this Court in Pamidimarri Chenchulakshmma's case (1 supra), mere non-user of the communal lands for the purposes for which they were intended and set apart, as

on the date of the application of the Abolition Act to the estate is not material and does not alter their communal character, if, they were lands coming within the description specified in Section (16)(a)(b) and (c) of the Andhra Pradesh (Andhra Area) Estates Land Act, 1908. On the date of application of the Abolition Act to the State, no patta can be granted in respect of Tank bed land under Section 13(b)(iii) of the 1948 Act. If the tank bed land is to be converted as agricultural land, an application is required to be moved before the District Collector under Section 20-A of the Andhra Pradesh (Andhra Area) Estate Abolition Act, 1908. There seems to be no application filed by the petitioners before the District Collector, as provided under Section 20(A) of the Act. The classification of the land for which ryotwari patta has been sought for, as on this day is tank bed land. Unless tank bed land is converted into Ryoti land, question of granting patta does not arise. Therefore, the order dated 30-5-89 passed by the primary authority-Settlement Officer, Visakhapatnam, as confirmed in TAS No.5 of 1989, dated 28.8.1995 does not suffer from any irregularity or illegality warranting interference of this Court in exercise of powers under Article 226 of the Constitution of India.

13. The writ petition is devoid of merits and accordingly, the same is hereby dismissed. No costs.

B.SESHASAYANA REDDY, J

Dt.27-06-2012
RAR

[1] 1971 APLJ 299 (F.B)